United States District Court
Southern District of Texas
FILED

APR 21 2006

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

vs. : Criminal Case # H-99-455(2)
Civil Case No. H-05-3423

JORGE LUIS GARZA,
Defendant-Movant.

MOVANT's MOTION PURSUANT TO RULE 55(a) OF THE FEDERAL RULES OF CIVIL PROCEEDURE REQUESTING FOR AN ENTRY OF DEFAULT AGAINST THE UNITED STATES

NOW COMES the Movant, Jorge Luis Garza, proceeding in pro se, and moves this Honorable Court for an entry of default against the United States for failing to plead and defend as ordered. Movant offers the following facts in support:

1. Movant filed a timely 28 U.S.C. §2255 with the Court on October 3, 2005.

2. The Court ordered the United States to respond by December 2, 2005.

3. The United States requested for an extension of time to respond until February 2, 2006, citing both caseload problems and an inability to obtain the record.

4. The Court granted an extension of time to respond by February 2, 2006.

5. The United States requested a second extension of time to respond until March 2, 2006, citing the same reasons.

6. The Court granted an extension of time to respond by March 2, 2006.

7. The United States requested a third extension of time to respond until April 3, 2006, citing the same reasons.

8. The Court granted an extension of time to respond by April 3, 2006.

9. The United States requested a fourth extension of time to respond until May 5, 2006, citing the same reasons.

10. The Court granted an extension of time to respond until May 5, 2006.

It is the Movant's contention that the United States willfully violated the Court's scheduling orders by creating intentional delays to evade responding to Movant's §2255 claims centered on ineffective asistance of counsel and actual innocence based on improper identification. The Government Attorneys can request extensions of time to respond all the way into the next

Ice Age, while still being unable to defend the conduct of trial counsel when he informed the jury that Colombian nationality had to be "lumped together" with drug trafficking and money laundering.

Movant could accept one or two valid requests for time extensions based on difficulty in obtaining transcripts. It is also common knowledege that the Southern District of Texas has one of the largest caseloads in the country for any U.S. Attorney's Office. However, there comes a point where a valid request can be abused. The Court could be assured that the United States would produce the transcripts immediately if it was needed in securing another conviction. In the case at bar, the transcripts only document Movant's claims, as they were attached as exhibits in the original pleadings.

A default occurs when a defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules. New York Life Ins. Co. v. Brown, 84 F.3d 137 at 141 (5th Cir. 1996); U.S. For Use of M-Co Const v. Shipco General, 814 F.2d 1011 (5th Cir. 1987); Technical Chemical Co. Co. v. IG-Lo Products Corp., 812 F.2d 222 (5th Cir. 1987).

The United States has failed to plead at four different times when the Court ordered the United States Attorney to do so. It instead, selected to request for extensions of time based upon an inability to secure transcripts and a backlog of appeals. The time has come where the same old excuse takes away from the credibility of the pleadings. For this reason, the Movant moves this Honorable Court for an entry of default against the United States if it fails to respond by May 5, 2006, as mandated by the Court.

Movant details his proposed sanctions pursuant to the Federal Rules of Civil Procedure in the attached Rule 37 Motion as to his pending 28 U.S.C. §2255.

Respectfully submitted,

Dated: April 13, 2006
Lewisburg, Pa

S/ Jorge L Garza

JORGE LUIS GARZA
Pro Se Litigant
Reg.# 19809-056
P.O. Box 1000
U.S. Penitentiary
Lewisburg, PA 17837

CERTIFICATE OF SERVICE

I, Jorge Luis Garza, hereby certify that I have served a true and correct copy of the foregoing Rule 55(a) Motion Requesting for an Entry of Default upon the United States, by placing same in a sealed, postage prepaid envelope addressed to:

United States Attorney's Office
Appellate Division
P.O. Box 61129
Houston, Texas
77208

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 13th day of April, 2006

Respectfully submitted,

S/ Jorge L Garza
JORGE LUIS GARZA
Pro Se Litigant